

To His Excellency the GOVERNOR of the Colony of NEW ZEALAND.

MAY IT PLEASE YOUR EXCELLENCY,—

We, the undersigned Commissioners appointed by your Excellency's Commission dated the 3rd day of November, 1888, to inquire into the several matters in the said Commission mentioned and to report upon the same, and particularly whether the decisions of the Native Land Court in relation, among others, to the lands known as Waipiro ought to be given full effect to, or whether sufficient doubt exists as to the correctness of such decisions as to render further inquiry proper, have now the honour to report as follows:—

1. We have carefully considered the petitions of Hori te Aunoanoa and Peneamine Waipapa and others presented to the House of Representatives, and the evidence and statements in relation thereto. The minute-books of the Native Land Court and the judgments delivered on the first and second hearings have been laid before us.

2. The judgment of the Court on the first hearing was delivered by Judge Mackay, and the Court awarded the whole of the block to the petitioners, and dismissed the claim of Tuta Nihoniho and those claiming with him.

3. A rehearing having been applied for and granted, the case was reheard before the Chief Judge and Judge Puckey. The Court awarded 10,000 acres—approximately one-third of the whole block—to Tuta Nihoniho and his party, and the residue to the petitioners.

4. The difference of opinion between the two Courts appears to arise chiefly from the different views taken as to a traditional gift of the land alleged to have been made to Iri te Kura. The Court on the first hearing held that the gift extended to the whole block, and was not confined to the portion south of the Waikawa Stream, as contended by Tuta Nihoniho. On the rehearing it was held that the alleged gift was a permission to occupy, extending to the whole block, and that the Whanaua-iri-te-kura and Tuta Nihoniho's ancestors, the Itanga-a-mate, had continued to occupy the land together without dispute down to 1863.

5. The Court upon the rehearing appears to have adopted the contention of neither party as to the nature and extent of the gift to Iri te Kura, and the evidence of occupation by the Itanga-a-mate is such as to raise serious doubts in our minds whether there ever was such occupation at all.

6. Having regard to all the circumstances of the case, we are of opinion that there is sufficient doubt as to the correctness of the decision of the Native Land Court on the rehearing in relation to the lands known as Waipiro to render further inquiry proper.

7. Upon the conclusion of the rehearing, Tuta Nihoniho and his party incurred expense in having the boundary of the portion awarded to him properly surveyed. In the event of a further hearing being directed, and the judgment of the Court on the rehearing not being affirmed, this expense would be wholly lost to them. We are therefore of opinion that some provision should be made for recouping that loss.

We have respectfully to make the following recommendations: (1.) That the judgment of the Court on the rehearing be set aside, and a further hearing be directed. (2.) That, in the event of the judgment on the rehearing not being affirmed, the costs of the survey incurred by Tuta Nihoniho and his party be repaid. (3.) That the costs of such further hearing be in the discretion of the Court. (4.) That provision be made for preserving any legal rights that may have been acquired by lessees previous to the passing of "The Native Land Court Act 1886 Amendment Act, 1888." (5.) That such legislation be obtained as may be necessary to give effect to the foregoing recommendations.

Given under our hands and seals this 19th day of December, A.D. 1888.

(L.S.) H. G. SETH SMITH, } Commissioners.
(L.S.) ROBERT TRIMBLE, }

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